

Assembly Bill No. 840

CHAPTER 445

An act to add Section 3044 to the Family Code, relating to family law.

[Approved by Governor September 21, 1999. Filed
with Secretary of State September 21, 1999.]

LEGISLATIVE COUNSEL'S DIGEST

AB 840, Kuehl. Child custody.

Existing law provides that custody should be granted according to the best interest of the child in a specified order of preference in which preference is first given to granting custody to both parents jointly or to either parent.

This bill would provide that there is a presumption, rebuttable as specified, that an award of sole or joint physical or legal custody of a child to a person who has perpetrated domestic violence, as defined, against the other party seeking custody of the child or against the child or the child's siblings within the previous 5 years is detrimental to the best interest of the child. The bill would provide that the presumption does not apply in cases in which both parents are perpetrators of domestic violence.

The people of the State of California do enact as follows:

SECTION 1. Section 3044 is added to the Family Code, to read:

3044. (a) Upon a finding by the court that a party seeking custody of a child has perpetrated domestic violence against the other party seeking custody of the child or against the child or the child's siblings within the previous five years, there is a rebuttable presumption that an award of sole or joint physical or legal custody of a child to a person who has perpetrated domestic violence is detrimental to the best interest of the child, pursuant to Section 3011. This presumption may only be rebutted by a preponderance of the evidence.

(b) In determining whether the presumption set forth in subdivision (a) has been overcome, the court shall consider all of the following factors:

(1) Whether the perpetrator of domestic violence has demonstrated that giving sole or joint physical or legal custody of a child to the perpetrator is in the best interest of the child.

(2) Whether the perpetrator has successfully completed a batterer's treatment program that meets the criteria outlined in subdivision (c) of Section 1203.097 of the Penal Code.

(3) Whether the perpetrator has successfully completed a program of alcohol or drug abuse counseling if the court determines that counseling is appropriate.

(4) Whether the perpetrator has successfully completed a parenting class if the court determines the class to be appropriate.

(5) If the perpetrator is on probation or parole, whether he or she is restrained by a protective order granted after a hearing, and whether he or she has complied with its terms and conditions.

(6) Whether the perpetrator of domestic violence has committed any further acts of domestic violence.

(c) In cases in which both parents are perpetrators of domestic violence, this presumption shall not be applicable.

(d) For purposes of this section, a person has “perpetrated domestic violence” when he or she is found by the court to have intentionally or recklessly caused or attempted to cause bodily injury, or sexual assault, or to have placed a person in reasonable apprehension of imminent serious bodily injury to that person or to another, or to have engaged in any behavior involving, but not limited to, threatening, striking, harassing, destroying personal property or disturbing the peace of another, for which a court may issue an exparte order pursuant to Section 6320 to protect the other party seeking custody of the child or to protect the child and the child’s siblings.

